

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 18688 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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JAYANAND K SHETTY - Petitioner

Versus

ANYONYNA SAHAKARI COOPERATIVE BANK LTD, - Respondent

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Appearance :

MR MANISH R BHATT for Petitioner.

MR KM PARIKH for Respondent.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 03/09/2007

ORAL JUDGMENT

1. RULE. Considering the narrow scope of the controversy between the parties, the petition is taken up for final hearing and disposal today. The

learned advocate for the respondent-Bank waives service of rule.

2. The principal contention raised on behalf of the petitioner is that the notices issued under Section 13(2) and Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('the Securitisation Act') are bad in law. However, the learned advocate for the petitioner has concentrated on challenging the action of the respondent-Bank under the provisions of Section 13(4) of the Securitisation Act on the ground that the objections dated 1st February, 2005 tendered by the petitioner in response to the notice under Section 13(2) of the Securitisation Act have not been dealt with by the respondent-Bank in accordance with the requirement of Section 13(3-A) of the Securitisation Act. Elaborating on the contention, it was submitted that the provision requires dealing with the representation/objections within a period of one week from the date of receipt of such representation/objections, but, admittedly, the respondent-Bank has not dealt with the same till

19th February, 2005. He, therefore, urged that in the circumstances the action under Section 13(4) of the Securitisation Act be declared to be bad in law.

3. The learned advocate for the respondent-Bank stated, on verification of the record, that the representation/objections dated 1st February, 2005 had been received by the respondent-Bank on 3rd February, 2005, but, have, admittedly, been responded to only on 19th February, 2005. However, he hastened to add that there was substantial compliance with the provisions of Section 13(3-A) of the Securitisation Act and Court must permit the respondent-Bank to proceed pursuant to notice under Section 13(4) of the Securitisation Act without permitting the petitioner to raise technical objections.

4. The facts, as accepted by both the sides, are not controverted. The facts go to show that compliance, if any, under Section 13(3-A) of the Securitisation Act by the respondent-Bank is belated. This Court has already, in the case of **Pan Pipes Resplendents Ltd. v. Stressed Assets Stabilization**

Fund vide judgment dated 14.06.2007 rendered in Special Civil Application No. 4045 of 2007, dealt with the scheme of the Act in the following words:

"Section 13(3A) of the Securitisation Act requires that the secured creditor shall consider the representation or objections made by the borrower on receipt of notice under subsection (2) of Section 13 of the Securitisation Act and in the event the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable the secured creditor shall communicate within one week of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower. Admittedly, in the present case, the objections were raised on 22.08.2006. Though exact date of receipt of the said objections by the respondent-financial institution is not available on record it is equally an admitted position that the said objections have been dealt with only on 28.02.2007, namely, after filing of the petition. Therefore, the respondent-financial institution has, while conveying the non-acceptance of the representation or objection, gone beyond the prescribed period of one week from the date of receipt of representation or objection. In the

circumstances, the action under Section 13(4) of the Act initiated vide notice dated 03.02.2007 is definitely in violation of the provisions of Section 13(3A) of the Securitisation Act. The said notice, therefore, cannot be permitted to operate and is hereby quashed and set aside".

5. Applying the aforesaid ratio to the facts available on record, the impugned notice dated 22.08.2006 issued under Section 13(4) of the Securitisation Act is hereby quashed and set aside.

6. An incidental submission was made on behalf of the petitioner that the petitioner has already approached the respondent-Bank with a proposal of settlement and the same is under active consideration of the respondent-Bank. The learned advocate for the respondent-Bank has submitted that the petitioner has been informed by the respondent-Bank to revise the offer and in case such upward revision is made, the respondent-Bank shall consider the same in accordance with law. It is not necessary for the Court to deal with the aforesaid submission. Suffice it to state that it is always open to the parties inter se to renegotiate the terms of the contract, and the Court

is not required to issue any direction in this regard.

7. In the circumstances, the petition is allowed on the limited count. Needless to state that in the event the respondent-Bank intends to initiate any fresh action in accordance with law, it is always open to the respondent-Bank, subject to right of the petitioner to challenge any such proposed action in accordance with law. Rule made absolute. There shall be no order as to costs.

[D.A.MEHTA,J.]

(patel)